

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CARL LEWIS,
Plaintiff,

vs.

CITY OF MONTGOMERY,
Defendant.

) Case No.: 2:06cv237-CSC

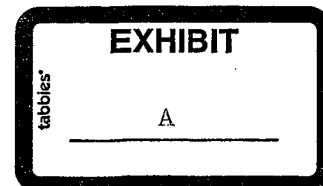
) **AFFIDAVIT OF TERRY GADDIS**

STATE OF ALABAMA

COUNTY OF MONTGOMERY

In person appeared before the undersigned officer, duly authorized to administer oaths, Terry Gaddis, who, after being duly sworn, states under oath as follows:

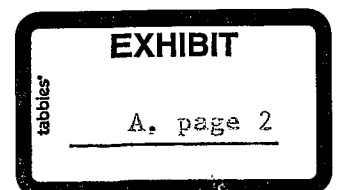
1. I am the Director of Fleet Management for the city of Montgomery and have personal knowledge of the facts set forth in this affidavit. I am an adult resident citizen of the state of Alabama and am competent to testify to the matters set forth herein.
2. Carl Lewis worked for me in the Fleet Management Department of the city of Montgomery prior to his termination. I recommended his termination based upon repeated violations of Operating Instruction No.8 despite repeated verbal warnings from both me and his Superintendent, Royce Albright.
3. Mr. Lewis's violations of the Operating Instruction No. 8 became so frequent in late 2004 and early 2005 that it became difficult for my staff to keep up. Due to an administrative staff shortage and increased work load in late 2004, my staff was



unable to type up and present a particular written reprimand to Mr. Lewis before he had committed the next successive violation. Mr. Lewis was, however, verbally warned about his habitual tardiness on several occasions during the 180 day period immediately prior to his termination. In fact, on January 31, 2005 his Superintendent, Royce Albright, had a very serious discussion with Mr. Lewis after he reported to work late that morning without calling in to notify us by his appointed start time. Mr. Lewis was, yet again, late for work the very next morning, and he, again, failed to call in to notify us before his appointed start time. It is imperative that the employees in my department notify their forman when they will not be there to work so that the staff can plan for manpower shortages, necessary shift changes, and overtime.


4. Johnny Ray Smith is a white male who worked in my department at the same time as Carl Lewis. Johnny Ray Smith was presented with three written reprimands at one time for late arrival without prior notification, violations of Operating Instruction No. 8 which occurred on three separate occasions in 2003, to wit: June 6, 2003, June 25, 2003, and May 7, 2003. Johnny Ray Smith was suspended for three days in accordance with the discipline set out in the rule.

5. Attached hereto are records from my departmental files, including a Notice of Departmental Disciplinary Hearing on Carl Lewis dated Feb. 7, 2005, with attachment, Operating Instruction No. 8, Operating Instruction No. 6, and a Notification of Suspension on Johnny Ray Smith dated August 1, 2003. Each of these documents was either made by me or under my supervision at or near the time of the events set out therein. They were made in the ordinary course of business, and they have been kept by me in the ordinary course of business. I hereby incorporate the statements made in those



documents into this affidavit by reference as if they were fully set out herein, and swear and affirm that the statements made were made as they are represented therein.

5. Further, the affiant saith not.

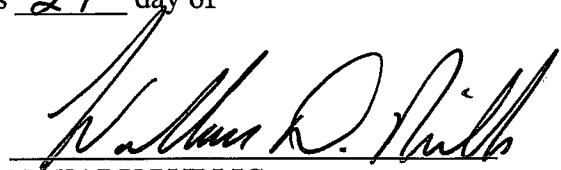

Terry Gaddis

STATE OF ALABAMA

COUNTY OF MONTGOMERY

I, the undersigned notary public in and for said county in said state, hereby certify that Terry Gaddis, whose name is signed to the foregoing affidavit, and who is known to me, after being fully informed of the contents of the instrument, signed and executed the same voluntarily after first being duly sworn by me on the date set forth below.

GIVEN under my hand and official seal, this 24th day of May, 2007


NOTARY PUBLIC

My Commission Expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Sept 23, 2009
BONDED THRU NOTARY PUBLIC UNDERWRITERS

PER FORM 31
Revised 01/05

NOTICE OF DEPARTMENTAL DISCIPLINARY HEARING

Carl Lewis

Employee's Name

4510 Lakeshore Drive

Street Address

Millbrook, AL 36054

City, State and Zip

Please be advised that a departmental hearing has been scheduled:

February 10, 2005 at 9:00 a.m.

Month, Day, Year, Time (to include a.m. or p.m.)

Director's Office

Location of disciplinary hearing

The purpose of a departmental hearing is to consider disciplinary action against you for the following reasons: (attach additional sheets as required).

SEE ATTACHMENT

You may be present if you desire and you may respond orally and/or in writing at the time of the hearing. You may not be represented by attorney at department level. The appointing authority may designate the department head or some other representative to act on his or her behalf in taking disciplinary actions. You will be advised in writing if you are entitled to a hearing before the appointing authority or his or her designee, before any disciplinary action becomes final, and you will be given the opportunity to waive your appearance at that hearing.

James H. Gaddini
Departmental Head

I hereby certify that this document was given to the employee or placed in the United States mail on

2 7 05
(Month) Day Year)

Signed:

Witness:

I hereby acknowledge receipt of this notification of said charges and of the hearing thereon.

Carl Lewis
Employee

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ATTACHMENT TO NOTIFICATION OF DEPARTMENTAL HEARING FOR CARL LEWIS

CHARGES:

Numerous verbal counseling sessions by your division superintendent, a verbal reminder for being late from the department's timekeeper and six (6) documented violations of Departmental Operating Instruction Number 8 to wit: failure to call your supervisor or the operations center before your shift start time advising that you would be late for work on the following dates – October 5, 2004, October 15, 2004, January 7, 2005, January 14, 2005, January 31, 2005 and February 1, 2005.

As stated above, you received several verbal counselings, one from the Assistant Director concerning you taking excessive time off with no accumulated leave, as well as your superintendent's verbal counselings for being tardy and not calling to let him or anyone else know you would be late to work prior to receiving each of these letters of reprimand. You also acknowledged your understanding of Departmental Operating Instruction (OI) Number 6 and the disciplinary consequences if you did not comply. I have advised all employees throughout my tenure as Director to refresh their memory of all department OIs every six months.

You have made no effort to improve your tardiness and taking time off without leave. In fact, you have continued to come to work late, take time off without leave and failed to call in prior to your shift start time to say you would be late so often, that the supervisory and administrative staff cannot process the disciplinary paperwork and administer the letters of reprimand fast enough to keep up.

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CITY SHOPS DEPARTMENT

OPERATING INSTRUCTION NO. 08

REVISION 23 JULY 1997

TO: All Department Personnel

SUBJECT: Time Accounting System

PURPOSE: To establish the policy and procedure of using time clock and time accounting

1. The time accounting system is a management tool that benefits both the employee and employer. The time clock provides the employee with a document that verifies the number of hours worked on any given day. It also assures that any overtime work is properly credited. EXCEPTION: The following City Shops employees are exempt from the Time Clock: Director, Assistant Director, Production Controller, Foremen, Master Mechanics, Petroleum Maintenance Supervisor and Clerical Personnel.
2. Punching a time clock is the responsibility of each individual. It is not permissible for any person to clock in or out with a time card other than their own.
3. Neglect or failure to clock in or out is considered a violation.
4. Personnel may clock in no earlier than seven (7) minutes prior to their scheduled work shift time. A person clocking in earlier than seven (7) minutes before scheduled shift start time will be considered in violation.
5. Personnel may clock out no earlier than five (5) minutes prior to the end of their shift. A person clocking out earlier than five (5) minutes before scheduled shift ends will be considered in violation.
6. When employees are going to be late reporting to duty, they are to call the Control Center/Foreman PRIOR to their shift start time. Failure to do so WILL result in a Written Reprimand. A person clocking in after his scheduled shift start time is considered "late", even if it is just one minute.
7. When an employee leaves the premises during a scheduled lunch break and cannot return to work because of sickness or unforeseen emergency, failure to notify Control Center/Foreman will result in a Written Reprimand. It is the responsibility of the Control Center/Foreman to inform the Assistant Director and a Time Clerk for time accounting purposes.

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CITY SHOPS DEPARTMENT

OPERATING INSTRUCTION NO. 08

CONTINUED

REVISION 23 JULY 1997

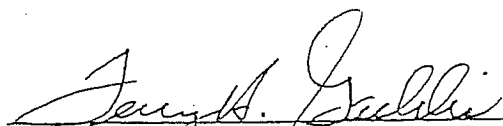
8. These are the categories of "Time Clock Violations".

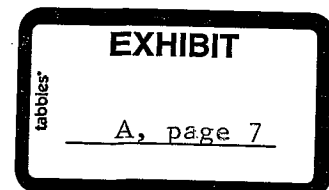
- A. Clocking IN/OUT for another person.
- B. Failure to clock IN or OUT.
(See Memorandum dated 1/24/96.)
- C. Clocking in EARLY without approval.
 - 1) Clocking in prior to seven (7) minutes before scheduled shift start time.
- D. Clocking out EARLY without approval.
 - 1) Clocking out prior to five (5) minutes before shift end time.
- E. Failure to call in PRIOR to shift start time.
(Or to inform of lateness status.)
- F. Failure to call back during lunch when not returning or returning late.

9. Personnel receiving three (3) reprimands in one or a combination of any of the above categories in a one hundred eighty (180) day period for any violations in paragraph eight (8) CAN expect to receive a three (3) day suspension without pay. A person receiving four (4) reprimands in a one hundred eighty (180) day period WILL be suspended without pay for a period of five (5) days. If an individual receives five (5) reprimands in a one hundred eighty (180) day period, a recommendation WILL be made for dismissal from City employment. To explain "a 180-day period": Receiving a second, third, etc., letter of reprimand before the 180-day period for that letter expires, extends the time by 180 days from the date of the second, third, etc. letter.

10. Disposition of Reprimands for Time Clock Violations after 180 days:

- A. Reprimands shall remain in the individual's personnel file.
- B. Reprimands over 180 days will not be used to justify disciplinary action to be taken in accordance with Paragraph 9 above.


TERRY H. GADDIS, DIRECTOR
CITY SHOPS DEPARTMENT



CITY SHOPS DEPARTMENT

OPERATING INSTRUCTION NO. 06

REVISION 21 JANUARY 2000

TO: All Department Personnel

SUBJECT: Leave Request

PURPOSE: To establish policy and procedure for requesting vacation leave, compensatory leave, personal leave day, emergency leave, schedule sick leave, military leave and for control of personnel absenteeism.

The following procedures shall be strictly followed.

1. GENERAL: ALL leave requests must be submitted on a leave request form and presented to your immediate supervisor (Foreman or Master Mechanic) for his approval or disapproval.

A. ANY employee not on the time clock should complete a leave request form. If the amount of time off is not known when the form is completed, the Assistant Director or time clerk should be notified of the actual time taken prior to 0730 Hours the morning of the following work day. Failure to follow this procedure will result in the employee being charged the remaining hours on his duty shift that day and the employee can expect to receive disciplinary action.

2. VACATION AND COMPENSATORY LEAVE: Request for vacation or compensatory leave must be submitted on a leave request form and presented to your immediate supervisor (Foreman or Master Mechanic) at least twenty-four (24) hours before the leave is to be effective. Your supervisor will either approve or disapprove the request. Should it be disapproved, no further action will be taken. When a request is approved by the supervisor, the request form will then be initialed by Foreman (if he is not the immediate supervisor), the Production Controller and in turn by the Assistant Director or the Director of the Department. The payroll clerk will get the leave request form and take the necessary administrative action to ensure the proper amount and type of leave is charged to the individual. After the payroll clerk has documented the leave time, the leave form will be returned to the individual's Foreman for future reference.

3. PERSONAL LEAVE DAYS: Personal leave days are processed the same as vacation and compensatory time except that a full day (8 hours) must be taken. Personal days cannot be carried over from one year to the next and must be taken no later than end of pay period ending the fiscal year or they will be forfeited.

4. EMERGENCY LEAVE:[✓] Emergency leave request will be processed in the same manner as vacation and compensatory leave with the exception: When an emergency exists during off duty hours (including lunch breaks taken off premises), the employee must call his/her supervisor (Foreman or Master Mechanic) before the beginning of his/her scheduled shift start time, explain the nature of the emergency and approximate length of time he/she will be absent. The Foreman or Master Mechanic will be responsible for submitting the leave form through the prescribed channels

5. SICK LEAVE: Scheduled sick leave requests (doctor/dentist appointments, medical tests, etc.) will be processed the same as vacation and compensatory leave with the following exceptions:

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Should an employee get sick while on duty, he/she will notify his/her supervisor, fill out a leave request form and then be allowed to leave work. The supervisor will be responsible for submitting the form through prescribed channels (Item #2 above).

B. When an employee is sick or injured during off duty hours, or a member of the employee's family is ill or injured requiring the employee's presence at home, they will:

(1) Call his/her supervisor (Foreman or Master Mechanic) and explain the nature of illness or injury and request permission to be off. If the individual cannot get in touch with his/her supervisor (Foreman or Master Mechanic) he/she must call the Director or Assistant Director and explain the nature of illness or injury and request permission to be off.

(2) Employee must call before his/her scheduled shift start time. Should the employee be incapacitated and unable to call, he/she will be held responsible to have someone call for him/her.

(3) Employee must call each day he/she is absent due to unscheduled sickness or injury, before his/her scheduled shift start time. The Director or Assistant Director may eliminate this requirement depending on individual circumstances.

(4) A doctor's certificate may be required stating the kind and nature of injury or illness of the employee or member of the immediate family.

C. Sick Leave may be granted only for absence due to personal illness, maternity, legal quarantine, attendance upon members of the immediate family whose illness requires the care of the employee, or death in the immediate family of the employee. Immediate family is hereby defined to include spouse, children, parents, grandparents, parents-in-law, and siblings.

D. Unusually strong ties with other relatives may be recognized for sick leave purposes upon written justification by the employee and approval of the appointing authority and/or Personnel Director.

E. An employee claiming sick leave may be required by his/her supervisor (Foreman or Master Mechanic), the Director, or Assistant Director to file a certificate from a physician stating the kind and nature of sickness or injury, that the employee was incapacitated for work for the period of absence, that the employee is physically unable to perform duties or that the employee has no contagious disease that might jeopardize the health of other employees, or that the employee is required to provide care for an ill family member. It shall be the decision of the supervisor to make a decision, based on the individual's attendance and disciplinary record, as to whether proof for such absence is necessary. This is to include physicians excuses for claims of sickness

6. **MILITARY LEAVE:** All officers and employees of the State of Alabama or any county, municipality or other agency or political subdivision thereof, or officers or employees of any public or private business or industry who shall be active members of the Alabama National Guard, Naval Militia or the Alabama State Guard organized in lieu of the National Guard, or any other reserve component of the armed forces of the United States, shall be entitled to military leave of absence from their respective civil duties and occupations on all days that they shall be engaged in field or coast defense or other training or on other service under the provisions of the National Defense Act, or the Federal Laws governing the United States reserves, without loss of pay, time efficiency rating, annual vacations or sick leave, but no such person granted such leave of absence with pay shall be paid for more than twenty-one (21) working days per calendar year, and such persons shall be entitled, in addition thereto, to be paid for no more than twenty-one (21) working days at any one time while called by the governor to duty in the active service of the

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state. This section shall apply to all schools and institutions of learning supported by state funds.

Each employee must request a leave of absence for Military Leave and this request may be made on the Departmental "Request for Leave" form.

B. Beginning 1 January of each year, those persons who request Military Leave of Absence will be charged one (1) Military Day for each day they are absent from their employment up to twenty-one (21) days. This will be leave with pay.

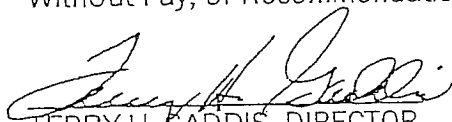
C. At the expiration of the twenty-one (21) days of paid military leave, the department head should inform the employee that any subsequent days taken for military duty shall be with leave without pay unless such employee submits a signed leave request advising the department that the employee wishes the department head to charge the employee with vacation leave, or compensatory leave, in lieu of leave without pay.

D. Under no circumstances will Sick Leave be substituted in lieu of leave without pay or Vacation Leave.

E. A copy of orders directing participation on Active Duty is to be submitted along with request for Military Leave.

7. Failure to comply with these rules will result in the employee being placed on unauthorized and/or unreported absence, not receive any pay for the affected number of days absent and be subject to appropriate disciplinary action. Additionally, any unauthorized or unreported absence from work for a period of three (3) days or more may be considered as a resignation as outlined in City and County of Montgomery Personnel rules and Regulations, Rule IX, Section 1.

8. Violations of any of the above provisions may be cause for Written Reprimand, Suspension Without Pay, or Recommendation for Dismissal.


TERRY H. GADDIS, DIRECTOR
CITY SHOPS DEPARTMENT

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Certified Mail
Return Receipt Requested

Date: August 1, 2003

NOTIFICATION OF SUSPENSION

Employee's Name Johnny Ray Smith
Street Address 168 Hillside Ridge
City/State/Zip Wetumpka, AL 36093

This is to notify you that as of this date, you are herewith suspended without pay for the period of
3 Days Starting 4 August 2003 - 6 August 2003 and Returning 7 August 2003

The reason(s) for this suspension is (are) (List all charges - attach additional sheets as required):

Third violation of late arrival without prior notification, as required by Fleet Management Operating Instruction #8.
25 June 2003, 6 June 2003, 7 May 2003.

Previous record considered (List all actions considered - attach additional sheets as required):

See Attached.

APPEAL RIGHTS

Suspensions in excess of 30 calendar days in any fiscal year may be appealed to the Personnel Board. Suspensions of 30 calendar days or less may not be appealed to the Personnel Board except as may be otherwise provided in Personnel Rules and Regulations, Rule VIII, Section 12 and Rule VII, Section 12 or 13.

A permanent employee who has received a suspension appealable under Personnel Rules and Regulations may answer these charges within three (3) days from the date of receipt of the notification of suspension by responding in writing to the Appointing Authority and providing a copy to the Personnel Director, who is located at 520 South Court Street.

Within ten (10) days from the time for filing your answer, if you desire a hearing before the Personnel Board you must file a written request with the Personnel Director.

Consult the Montgomery City-County Personnel Department, 520 South Court Street, relative to any other rights you have under the Merit System Law.

I hereby certify that this document was given to the employee or placed in the United States mail on

August 1, 2003
month/day/year
[Signature]
Employee

[Signature]
Department Head/Appointing Authority
Director, Fleet Management
Title

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